

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JOANNA VARGAS,	:	
	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	Docket No. 1:16:CV-01657-YK
	:	(Judge Kane)
PENN STATE HERSHEY	:	(Electronically Filed)
MILTON S. HERSHEY	:	
MEDICAL CENTER,	:	
	:	
Defendant	:	JURY TRIAL DEMANDED

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF
DEFENDANT’S MOTION FOR PARTIAL SUMMARY
JUDGMENT OF PLAINTIFF’S CLAIM FOR NEGLIGENT
INFLICTION OF EMOTIONAL DISTRESS**

Defendant, Penn State Hershey Milton S. Hershey Medical Center files the within Statement of Material Facts pursuant to Local Rule 56.1. For the purpose of Defendant’s Motion for Partial Summary Judgment, Defendant accepts the following facts:

a. The Parties

1. Plaintiff Joanna Vargas is Justino Vargas’s widow and Executor of Mr. Vargas’s Estate. (Doc. 1, ¶ 4.) At the time of the medical treatment at issue in this medical professional liability action,

Mr. and Mrs. Vargas lived in Florida but were visiting family in the Hershey, Pennsylvania area. (Ex. A, HMC001-006, ED Summary.)

2. The “Penn State Milton S. Hershey Medical Center” is a fictitious name owned and used by the Milton S. Hershey Medical Center, a nonprofit corporation organized and existing under the laws of the Commonwealth of Pennsylvania and licensed to deliver health care services as a hospital. (Doc. 21, ¶ 5.)

b. The Treatment at Issue

3. In the early morning hours of December 2, 2014, Mr. Vargas began to develop bright red, moderate rectal bleeding and almost passed out on the toilet. (Ex. A, HMC001-006.) He went to the bathroom and had a large bowel movement consisting of bright red blood. (Ex. A, HMC0042-0048, History & Physical.) At 3:00am, he had a second large bright red bowel movement. (Id.)

4. Mr. Vargas required help from his wife and sons to get off the toilet and Mrs. Vargas noticed large amounts of bright red blood in the toilet bowl. (Ex. A, HMC001-006.) Mr. Vargas told his wife that he felt weak and dizzy. (Id.)

5. Two hours after his rectal bleeding started, Mr. Vargas's family summoned an ambulance, which transported him to the Medical Center's Emergency Department (ED). (Id.) Mrs. Vargas arrived at the Medical Center's ED separately, having been transported by her grandson. (Ex. B, J Vargas Depo., 39:1-11.)

6. While in the ED, Mr. Vargas was determined to have acute blood loss anemia and hospital staff inserted two large bore IVs to begin fluid resuscitation, obtained bloodwork, and ordered a CT of his abdomen. (Ex. A, HMC001-006.)

7. Mr. Vargas was admitted to the Medical Center's internal medicine service and was taken to the Medical Center's Intermediate Care Unit (IMC) for close observation. (Ex. A, HMC0037-0041, Discharge Summary.) He was aggressively resuscitated with IV fluids (IVF) and his vital signs normalized. (Id.)

8. On consultation, the Medical Center's gastroenterology (GI) service planned for performance of an endoscopy (EGD) and colonoscopy. (Ex. A, HMC0060-0061, Consult.) The GI service's assessment was that Mr. Vargas had an acute GI bleed, possibly due to

a bleeding diverticula¹ – Mr. Vargas had a history of diverticular disease – or peptic ulcer disease (PUD) due to Mr. Vargas recently beginning a course of nonsteroidal anti-inflammatory drugs (NSAIDs). (Id.)

9. In the late afternoon on December 2, 2014 – the same day that Mr. Vargas initially presented to the Medical Center – he underwent an EGD and colonoscopy to evaluate the cause of his rectal bleeding. (Ex. A, HMC0066-0067, EGD Report; HMC0069-0070, Colonoscopy Report.)

10. Mrs. Vargas was not present for performance of the EGD or colonoscopy. (Ex. B, 45:1-7.)

11. Mrs. Vargas learned after those studies were performed that her husband's GI bleeding arose from stomach ulcers. (Id., 45:4-7; 45:19-47:7.)

12. Mrs. Vargas's only question after her husband's endoscopy and colonoscopy was whether she could see him. (Id., 47:8-17.)

¹ Diverticula are small pouches that bulge outward through the colon, or large intestine.

13. After learning the results of her husband's endoscopy and colonoscopy, Mrs. Vargas left the hospital to get some sleep. (Id., 49:3-50:9.)

14. The following morning, December 3, Mr. Vargas texted Mrs. Vargas and stated that it was possible that he may not be released from the hospital because his blood count was very low. (Id., 50:20-51:5.)

15. Later on December 3, however, Mr. Vargas again texted Mrs. Vargas and stated that his blood counts were better and that he was ready for discharge from the hospital. (Id., 55:5-9.)

16. After receiving Mr. Vargas's text indicating that he was being discharged from the hospital, Mrs. Vargas returned to the hospital on December 3 with a family friend and picked up her husband. (Id., 56:1-57:2.)

17. Mrs. Vargas did not speak with any Medical Center physicians on December 3, the day her husband was discharged from the hospital. (Id., 59:19-24.)

18. After Mrs. Vargas and a family friend picked up Mr. Vargas from the Medical Center, they went to lunch and then to the airport for a scheduled flight to return home to Florida. (Id., 60:9-18.)

19. Between the time when Mr. Vargas was discharged from the Medical Center through the time of their flight, Mr. Vargas “looked okay” to Mrs. Vargas and she “wasn’t concerned” about his condition. (Id., 62:4-11.) While the Vargas’s were waiting at the Harrisburg airport, Mr. Vargas was in good condition. (Id., 9-13.)

20. The Vargas’s traveled by air from Harrisburg to Philadelphia, where they connected on another flight to Jacksonville. (Id., 63:14-64:1.) Mr. Vargas’s condition was normal during the Harrisburg-to-Philadelphia flight. (Id.)

21. During the flight from Philadelphia to Jacksonville, Mr. Vargas suffered a recurrence of his rectal bleeding. Mrs. Vargas, who was seated next to him on the flight, saw her husband become unresponsive. (Id., 67:3-13.) Ultimately her husband got up to go to the bathroom and Mrs. Vargas saw a trail of blood, “a lot of blood.” (Id., 68:1-9.)

22. After Mr. Vargas entered the airplane bathroom, he collapsed with the door opened. Mrs. Vargas started screaming for help and two passengers came forward and identified themselves as medical professionals. (Id., 68:10-24.) Those passengers attempted to

resuscitate Mr. Vargas while the plane made an emergency landing.

(Id., 69:1-6.)

23. After the plane landed, Mr. and Mrs. Vargas were taken to a hospital in separate ambulances. Mrs. Vargas learned at the hospital that her husband had passed away. (Id., 76:1-13.)

Respectfully submitted,

Dated: February 20, 2018

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